

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

**DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR  
JOINT MOTION TO ENFORCE SETTLEMENT**

Agreements to settle pending lawsuit are enforceable by motion. Union Electric Company v. Mowinski, Case No. 05-4375-CV-C-NKL (W.D. Mo. 2006). The Release and Settlement Agreement at issue states that Missouri law governs the terms of the agreement. Under Missouri Law, agreements to settle lawsuits are also enforceable by motion. McKean v. St. Louis County, 964 S.W.2d 470 (Mo. App. 1998). Settlement agreements are governed by basic principles of contract law. Union Electric Company v. Mowinski, Case No. 05-4375-CV-C-NKL (W.D. Mo. 2006) citing Sheng v. Starkey Laboratories, Inc., 53 F.3d 192, 194 (8<sup>th</sup> Cir. 1995).

The parties mediated the case on August 25, 2005 at the Federal Courthouse and were able to reach a settlement agreement. St. Paul Travelers agreed to pay \$250,000.00 to plaintiff and to pay the cost of the mediation in exchange for plaintiff's release of all claims against defendants and dismissal of the action.

At the end of the day, defendants' counsel presented a draft settlement agreement to plaintiff's counsel. The parties marked up the agreement and discussed going back to counsel for the City of O'Fallon's office to make the changes so that plaintiff could execute the agreement.

Plaintiff's counsel stated that he needed to obtain tax advice regarding whether one or two checks should be issued prior to his client executing the agreement. No other characterization of the damages was discussed at that time.

Additionally, the agreement which plaintiff's counsel initialed as agreed to as to form required only the signature of the plaintiff. Defendants have offered to tender the checks for payment of the settlement to plaintiff's counsel in exchange for a signed settlement agreement on the terms agreed upon by the parties. Plaintiff's counsel continues to insist that new terms be added to the agreement. He insists that the payment of the settlement be characterized as payment related to specific types of damage in an effort to avoid tax consequences. He also insists that the City of O'Fallon sign the release even though the City of O'Fallon has not agreed to undertake any action or to make any payment to plaintiff. St. Paul Travelers has agreed to make the payment to plaintiff and the checks have been delivered to counsel for the City of O'Fallon. Defendants stand ready to exchange the checks for a signed release on the terms on which the parties agreed on August 25, 2006.

The Defendants respectfully request that the Court enforce the settlement reached by the parties and require Mr. Talbott to execute the settlement agreement. The Defendants also request their attorneys fees associated with this motion.

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SMITH, L.L.P**

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 7<sup>th</sup> day of September, 2006, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following: Mr. Andrew J. Martone, Bobroff, Hesse, Lindmark & Martone, P.C., 7730 Forsyth Blvd., Suite 200, St. Louis, MO 63105, Attorney for Plaintiff.

/s/ Michelle R. Stewart